Supreme Court, U.S.
FILED
NOV 18 1994
OFFICE OF THE CLERK

No. 94-839

In The

Supreme Court of the United States

October Term, 1994

LUBA HILL,

Petitioner,

vs.

JAMES T. HILL,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RICHARD G. KENT, ESQ.
Counsel of Record
COHEN AND WOLF, P.C.
1115 Broad Street
Bridgeport, CT 06604
Tel. (203) 368-0211

Attorney for the Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

15 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 2

A. The petitioner has failed to present any special and important reasons for granting her petition 2

B. The petitioner was not denied due process of law as a result of the procedures implemented by the trial court 4

CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) 4

Hill v. Hill, 35 Conn. App. 160, *cert. denied*, 231 Conn. 914 (1994) 6

Johnson v. United States, 318 U.S. 189, 63 S.Ct. 549, 87 L.Ed.2d 704, *rehearing denied*, 318 U.S. 801, 63 S.Ct. 826, 87 L.Ed.2d 1164 (1943) 6

Rozbicki v. Huybrechts, 218 Conn. 386 (1991) 5

State v. Drakeford, 202 Conn. 75 (1987) 5

STATUTES

Conn. Gen. Stat. § 46b-56 2

Conn. Gen. Stat. § 46b-86 2

SUPREME COURT RULES

Rule 10.1 ..... 3, 6

Rule 10.1(a)-(c) 3

STATEMENT OF THE CASE

The petitioner's statement of the case contains numerous inaccurate claims and irrelevant facts. The only material facts relevant to the present petition for certification are set forth below.

The petitioner commenced this dissolution of marriage action, and the respondent counterclaimed for dissolution. The action was assigned for trial on at least two different occasions, and the petitioner requested and received continuances. The case came up for trial on a date previously assigned by the Court, and the petitioner appeared with counsel and requested another continuance. The request was reviewed by both the trial judge and the presiding judge on family matters. After consideration of the request, the Court instructed the parties to commence trial that afternoon. The Court issued its order while all parties and all counsel were present.

At the time that trial was set to commence, counsel for the petitioner informed the Court that the petitioner was too upset to appear. The Court directed counsel to proceed, but he refused and left the courtroom despite repeated warnings from the Court as to the consequences of his actions. The Court nonsuited the petitioner and the respondent proceeded on his counterclaim. The Court entered judgment on the counterclaim and entered specific financial and custody orders thereunder.

The matter was reviewed by the trial court at a full hearing on the petitioner's Motion to Reopen Judgment, which was denied. The petitioner appealed to the Appellate Court of the State of Connecticut. The Appellate Court unanimously affirmed the judgment of the trial

court. The petitioner sought certification from the Supreme Court of the State of Connecticut, which was denied.

The Connecticut courts retain continuing jurisdiction over periodic orders including custody, visitation, child support and alimony. See Conn. Gen. State. §§ 46b-56 and 46b-86, attached as Appendix A. The petitioner has availed herself of the procedures provided by the courts.

SUMMARY OF ARGUMENT

The procedures followed in the dissolution of marriage action were more than adequate to provide the petitioner with due process of law. Her voluntary decision to deliberately absent herself from the trial proceedings was confirmed by her attorney's refusal to participate, despite the Court's repeated warnings and urgings to the contrary. The petitioner was not denied due process of law as a result of any procedures implemented by the trial court.

ARGUMENT

A. The petitioner has failed to present any special and important reasons for granting her petition.

"A review of writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor." Supreme Court Rules, Rule

10.1. The Supreme Court Rules clearly set forth the factors and circumstances which will be considered by the Court in determining whether or not to grant a petition for certiorari. A petition may be granted:

> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Supreme Court Rules, Rule 10.1(a)-(c).

The present petition does not fall within any of the enumerated categories. This case does not involve a ruling by a United States court of appeals. The petitioner does not claim that the Connecticut Supreme Court decided a federal question in a manner that conflicts with the decision of any other state court of last resort, or of a United States court of appeals. Finally, the petitioner cannot possibly argue that the Connecticut courts have

decided an important question of federal law which has not been settled by the United States Supreme Court. The case law is replete with decisions on due process rights. Because the petitioner has failed to present any "special and important" reason to grant her petition, the Court should deny the petition.

B. The petitioner was not denied due process of law as a result of the procedures implemented by the trial court.

The petitioner claims that, in light of the fact that custody of minor children was at stake in the dissolution action, the Connecticut courts violated her due process rights by allowing trial to proceed in the absence of the petitioner and her counsel. In support of her claim that she was deprived of due process as a result of the procedures implemented by the trial court, the petitioner cites *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985). The petitioner's reliance on *Cleveland Board* is misplaced, since that case and its progeny are irrelevant to the present facts. *Cleveland Board* addressed the issue of how much process the government must afford a litigant. In this case, the petitioner was given more than a full and fair opportunity to be heard, and was repeatedly encouraged to participate in the trial. The petitioner nevertheless voluntarily waived process, and left the courtroom. Her attorney then proceeded to leave the courtroom of his own accord, despite the trial judge's explicit warnings that his departure would result in the entry of a nonsuit against his client.

Furthermore, the petitioner's reliance on cases regarding the right to conceive, bear and raise one's own children is misplaced, if not ludicrous. The cases are irrelevant to the issue at hand. The petitioner asks this Court to make a quantum leap and conclude that, because the right to conceive, bear and raise children is so compelling, the petitioner as a parent was arbitrarily denied a fair opportunity to prepare for trial and was erroneously deprived of an attorney. On the contrary, the petitioner's absence during trial was entirely voluntary. In *State v. Drakeford*, 202 Conn. 75 (1987), the defendant announced during jury voir dire that he wished to return to jail. The court informed the defendant that the case would continue without him, and allowed the defendant to be voluntarily removed from the courtroom. The State Supreme Court concluded that the trial court did not err in proceeding in the defendant's absence. Similarly, the trial judge repeatedly warned counsel for the petitioner that the Court intended to proceed with trial in his absence. The principles of *Drakeford*, a criminal case, apply with equal force to civil litigation. *Rozbicki v. Huybrechts*, 218 Conn. 386, 394 (1991).

The principal issue throughout these proceedings has been and continues to be whether the litigant or the court controls the Connecticut trial docket. The petitioner's claims have been considered by the presiding judge assigned to family matters, the trial judge, the trial judge again on the petitioner's Motion to Reopen Judgment, the Appellate Court of the State of Connecticut, and the Supreme Court of the State of Connecticut, with the same result: the court must control the docket. Yet the petitioner now attempts to convince this Court that her

request for certification is worthy of consideration. It is respectfully submitted that this Court's exercise of "judicial discretion" does not warrant such certification, because there are simply no "special and important reasons therefor". Supreme Court Rules, Rule 10.1.

The petitioner voluntarily chose to leave the courtroom after she learned that her request for a continuance had been denied. Her attorney then chose to leave. As the Appellate Court of the State of Connecticut noted in its exhaustive opinion, "[w]hen the plaintiff left the courthouse upon learning that [the trial judge] insisted on going forward, she waived her right to be present. She charted her course and cannot now complain if that course caused her to founder on rocks that she had not foreseen. See *Johnson v. United States*, 318 U.S. 189, 201, 63 S.Ct. 549, 87 L.Ed.2d 704 (1943)." *Hill v. Hill*, 35 Conn. App. 160, 168, *cert. denied*, 231 Conn. 914 (1994). Any prejudice suffered by the petitioner is a direct result of her voluntary departure from the courtroom, not of any procedures implemented by the trial court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES T. HILL, Respondent

RICHARD G. KENT
Counsel of Record
RICHARD L. ALBRECHT
SHARON BRADLEY BOWLER
COHEN & WOLF, P.C.
1115 Broad Street
Bridgeport, CT 06601
(203) 368-0211
His Attorney

Sec. 46b-56. (Formerly Sec. 46-42). Superior court orders re custody and care of minor children in actions for dissolution of marriage, legal separation and annulment. Access to records of minor children by noncustodial parent. (a) In any controversy before the superior court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may at any time make or modify any proper order regarding the education and support of the children and of care, custody and visitation if it has jurisdiction under the provisions of chapter 815o. Subject to the provisions of section 46b-56a, the court may assign the custody of any child to the parents jointly, to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party including but not limited to grandparents.

(b) In making or modifying any order with respect to custody or visitation, the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if he is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interests of the child.

(c) In determining whether a child is in need of support and, if in need, the respective abilities of the parents to provide support, the court shall take into consideration all the factors enumerated in section 46b-84.

(d) When the court is not sitting, any judge of the court may make any order in the cause which the court might make under subsection (a) of this section, including orders of injunction, prior to any action in the cause by the court.

(e) A parent not granted custody of a minor child shall not be denied the right of access to the academic, medical, hospital or other health records of such minor child unless otherwise ordered by the court for good cause shown.

Sec. 46b-86. (Formerly Sec. 46-54). Modification of alimony or support orders and judgments. (a) Unless and to the extent that the decree precludes modification, any final order for the periodic payment of permanent alimony or support or an order for alimony or support pendente lite may at any time thereafter be continued, set aside, altered or modified by said court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines established pursuant to section 46b-215a, unless there was a specific finding on the record that the application of the guidelines would be inequitable or inappropriate. There shall be a rebuttable presumption that any deviation of less than fifteen percent from the child support guidelines is not substantial and any deviation of fifteen percent or more from the guidelines is substantial. Modification may be made of such support order without regard to whether the order was issued before, on or after May 9, 1991. In determining whether to modify a child support order based on a substantial deviation from such child support guidelines the court shall consider the division of real and personal property between the parties set forth in the final decree and the benefits accruing to the child as the result of such division. After the date of judgment, modification of any child support order issued before or after July 1, 1990, may be made upon a showing of such substantial change of circumstances, whether or not such change of circumstances was contemplated at the time of dissolution. By written agreement, stipulation or by decision of the court, those items or circumstances that were contemplated and

are not to be changed may be specified in the written agreement, stipulation or decision of the court. This section shall not apply to assignments under section 46b-81 or to any assignment of the estate or a portion thereof of one party to the other party under prior law. No order for periodic payment of permanent alimony or support may be subject to retroactive modification, except that the court may order modification with respect to any period during which there is a pending motion for modification of an alimony or support order from the date of service of notice of such pending motion upon the opposing party pursuant to section 52-50.

(b) In an action for divorce, dissolution of marriage, legal separation or annulment brought by a husband or wife, in which a final judgment has been entered providing for the payment of periodic alimony by one party to the other, the superior court may, in its discretion and upon notice and hearing, modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party.

(c) When one of the parties, or a child of the parties, is receiving or has received aid or care from the state under its afdc program as provided in Title IV-A of the Social Security Act or under its foster care program as provided in Title IV-E of the Social Security Act, or where

one of the parties has applied for child support enforcement services under Title IV-D of the Social Security Act as provided in section 17-578, such motion to modify shall be filed with the family support magistrate division for determination in accordance with subsection (m) of section 46b-231.